

Comptroller

General Counsel

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Temporary Lodging Allowances

1. Reference is made to your memorandum of 25 August 1951, concerning the payment of temporary lodging allowances . You have requested our comments regarding the two questions raised in paragraph 6 of a memorandum submitted by the Acting Chief, Finance Division.

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2. The first question follows:

"Is there objection from an Agency policy point-of-view to the apparently regular practice of paying temporary lodging allowances in those cases where it is known that the employee is paying nominal rent? As heretofore noted, this practice has been confirmed by officials of the Department of State."

3. The Standardized Allowance Regulations merely state that a temporary lodging allowance "may" be granted at a certain rate (Section 2.41); there is no law or regulation which requires payment in the maximum amount. Consequently, there is no legal bar to adoption of an Agency policy which restricts the amount of a temporary lodging allowance. This may be done under Section 1.6 of the SARs.

4. At the present time, the SARs provide that "in no case shall an officer or employee be granted a temporary lodging allowance at a rate in excess of the aggregate amount of the per diem that would be allowable to such officer or employee for himself and the members of his family if they were in a travel status" (Section 2.41). This, of course, limits the amount of such an allowance, and must be followed.

5. Our final comment on the first question concerns the statement that Foreign Service officials pay the maximum temporary lodging allowance even though the employee pays only a nominal rent. There is no legal requirement that CIA follow such a course of action.

6. The second question follows:

"If the total payment for quarters (not including other known incidental expenses of living in a hotel) is stated to be 'service charge,' is there a legal or policy question

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concerning the payment of temporary lodging allowances even though the amount of such 'service charge' may approximate the amount of 'rent' in other cases where temporary lodging allowance is granted. As noted above, and in the attached memorandum from [ ] it appears that temporary lodging allowances may be paid by the Department of State in such cases. However, we have been unable to obtain specific confirmation to that effect."

7. This question requires some discussion of the nature of a temporary lodging allowance, which has been defined as a living-quarters allowance for the cost of lodging, heat, light and fuel (including gas and electricity) at temporary quarters for the officer or employee and his family, upon their first arrival at a new post (Section 2.1, SARs). It is paid when Government-owned or rented quarters are not made available (Section 1.5f). It is based upon the fundamental principle that the Government should reimburse personnel for those expenses directly attributable to the requirements of their official duties (Page 125, House Report No. 2508, 79th Congress, 2d Session).

8. It is perhaps unfortunate that a more comprehensive definition of the temporary lodging allowance is not available. "Lodging" has been included as one element of such an allowance, but there is no reference to "service charge." The meaning of lodging has been considered by the Comptroller General in connection with similar matters, however. For example, it has been held that lodging was provided by the Government when an employee was furnished without charge both shelter and bed or bedding (decision of 31 July 1929, A-6311). The opposite conclusion was reached when the employee was furnished a sleeping bag, but no shelter (24 Comp. Gen. 458). In another case, it was held that lodging was furnished when the employee was provided with a Government-owned trailer (16 Comp. Gen. 895, at 898). Lodging is not sufficiently expansive to cover food (18 Comp. Gen. 698). See also 15 Comp. Gen. 78, holding that free lodging was furnished even though a charge was made for laundry of mess linen. This decision was rendered despite the claimant's contention that he was charged for bedding, linen, towels and room service.

9. The question of Government quarters has also been considered by the Comptroller General. It has been held that Government quarters were provided when a Marine officer on TIV in Saipan occupied quarters furnished combat troops, regardless of the type or suitability of quarters (24 Comp. Gen. 473).

10. A recent addition to the SARs is a definition of "rent" (Section 1.5j). This definition is the result of requests from various agencies to define which specific items may be included as "rent" in determining individual quarters allowances. There was considerable pressure to include "key money" as an item of "rent," but the Department of State held there was no legal basis for such inclusion. (This definition is not necessarily controlling as to the problem under discussion, but it is of sufficient similarity to be interesting).

11. The specific question submitted is whether a "service charge" is a proper item for consideration in connection with a temporary lodging allowance. It is our opinion that this cannot be decided on mere grounds of terminology; rather, we feel the facts should be controlling. For example, if an employee is staying at an Army-operated hotel and must pay 50 cents per day to stay there, it is our opinion that Congress intended to reimburse him for the necessary out-of-pocket expense, whether it is called a "service charge" or a "rent." The important fact, we believe, is whether the expenditure is necessary to obtain lodging or anything directly connected therewith. Payments to obtain maid service for a hotel room normally would be directly connected with lodging expense, in our opinion.

12. On the other hand, there are many expenditures which are personal in nature and not directly connected with an employee's lodging. Reimbursement for such expenditures would not appear permissible.

13. In this connection, <sup>25X11A</sup> your attention is invited to the statement attributed to [ ] a Senior Foreign Service Inspector, that a temporary lodging allowance is intended to cover the cost of eating in hotel restaurants, the cost of moving personal belongings to permanent quarters, the cost of tips to hotel maids, plus a surplus to provide for costs incurred at the time the person departs the post. We have been unable to find any evidence to substantiate this statement, either in the law or the regulations. It appears that a transfer allowance, as authorized by Section 901(2)(ii) of the Foreign Service Act of 1946, was intended to cover similar expenses. In any event, Congress made this statement:

"Section 901(2)(ii) provides ... a new form of cost-of-living allowance to reimburse personnel for the extraordinary and necessary expenses incurred in connection with transfer to a new post and establishment of a residence there. Such costs which are not now reimbursed and which frequently cause serious hardship to personnel include the purchase of new

wardrobes when the transfer is, for example, from a post in the far north to a tropical post, the necessary acquisition of new furnishings and equipment such as electrical appliances to fit a different voltage, and miscellaneous expenses invariably arising in connection with installation in a new residence. This type of allowance is paid by the British and many other foreign services. Expenses of this kind are in varying degrees absorbed by the above-mentioned representative American corporations which maintain foreign services abroad." (Page 128, House Report No. 2508, 79th Congress, 2d Session).

In addition to the above, there is for consideration the following quotation from the GARS:

"The purpose of the temporary lodging allowance is to provide temporary quarters funds for personnel assigned to a particular post during the period (not to exceed 3 months) in which permanent quarters are being obtained. The allowance is determined largely from the data on hotel rates as reported in the retail price schedule. The allowance is intended to cover the cost of a room with bath at the hotels ordinarily used for temporary residence. The allowance is not intended to cover costs of meals or other incidentals." (Appendix A - Intro 2.2) (Emphasis added).

The comments in Appendix A - I - 40 of the GARS are also interesting.

14. By way of conclusion, we repeat that there is no legal objection to reimbursing an employee for "service charges" at an Army-operated hotel, if such an expenditure is necessary to obtain lodging or anything directly connected therewith. This conclusion is based upon the intent of Congress to reimburse Government employees for expenses directly attributable to the requirements of their official duties. In addition, we have found no prohibition against the principle of the Government furnishing a portion of the lodging and at the same time granting an allowance to obtain the remaining portion of that lodging.

15. We do not believe, however, that Congress intended that an employee should receive a maximum temporary lodging allowance when he spends only a small amount per day at an Army-operated hotel. There are adequate administrative steps which may be taken to pay less than the maximum temporary lodging allowance, and we see no reason why such steps should not be taken. The general tenor of

all allowance legislation is to permit adjustments which reflect the actual expenditure by the employee. This idea is also found in the Standardized Government Travel Regulations and the Standardized Allowance Regulations.

LAWRENCE R. HOUSTON

OGC/JJB:mr

Enclosures:

1. Memo to Comp. from Finance Div.,  
dated 28 July 1951, re subject
2. Memo to Actg. Chief, Finance Div.,  
from Authorized Certifying Officer,  
dated 16 May 1951, re subject

Distribution:

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